

**BEFORE THE SOUTH MUMBAI DISTRICT CONSUMER
DISPUTES REDRESSAL FORUM,**

**Puravatha Bhavan, 1st Floor, General Nagesh Marg, Near Mahatma Gandhi Hospital,
Opposite Party p. M.D. College, Parel, Mumbai – 400 012.**

Complaint No. SMF/MUM/301/2009

Date of filing : 30/10/2009

Date of Order : 21/05/2010

Lt.Col. (Retd.) Shrikant Yeshwant Kane,
R/o.112-B, Shivaji Nagar,
– 440 010.

..... Complainant

V/s

Public Service Commission,

Bank of , M.G.Road,

Mumbai – 400 001..

..... Opposite Party

Coram:

Shri. S.B.Dhumal : Hon'ble President

Smt. Jyoti S. Iyer : Hon'ble Member

Present: Complainant present in person

None for the Opposite Party

O R D E R

PER SAY - SMT. JYOTI IYER - HON'BLE MEMBER :

1) In brief consumer dispute is as under –

That the Complainant vide his application dated 06/08/2009 had applied to the Opposite Party and requested for some information under provisions of Section 6(1) of RTI Act, from the Secretary Maharashtra Public Service Commission, Mumbai.

2) It is submitted that contrary to the provisions given in Section 7(1) of RTI Act, 2005, the Under Secretary-cum-State Information Officer Maharashtra Public Service Commission, Mumbai replied to the Complainants application vide his letter dated 19/09/2009. Said reply was received by the Complainant on 22/09/2009. As per the Complainant the aforesaid reply from the Opposite Party did not contain the answer to his specific questions clearly stated in his application.

3) It is alleged by the Complainant that unwarranted delay was caused on the part of Respondent in rendering just service, in the form of information which he had requested for. It has caused tremendous inconvenience to the Complainant and he was burdened financially and also went through unwarranted mental stress and worries and had to incur additional expenses in processing his Writ-Petition No.4099/2008 with the Hon'ble High Court of judicature of , Nagpur Bench Nagpur. Because of the inordinate delay caused by the Opposite Party, the Complainant was required to incur additional expenditure of Rs.80,000/-, particulars of which are given in complaint in para no.4. The Complainant has requested to direct Opposite Party to pay Rs.80,000/- to the Complainant towards expenses incurred by him and direct the Opposite Party to comply with the above request within period of 30 days from the date of award.

4) On 21/12/2009 Mr.N.S.Patwardhan, Dy.Secretary-cum-Government Appellate Authority, Maharashtra Public Service Commission sent letter to the President of this Forum which was received by this Forum on 23/12/2009. In the aforesaid letter it is stated that the Complainant-Lt.Col.(Retd.) Shrikant Yeshwant Kane had made an application no.301/2009 under Central Right of Information Act, 2005 and in the application applicant Lt.Col.(Retd.) Shrikant Yeshwant Kane sought information about the names and number of lady candidates who had applied for interview held by Maharashtra Public Service Commission from the June,1996 to June,1998 for the post of Zilla Sainik Welfare Officer and also sought information about experts and names of experts and their designation who were present at the time of interview. It is submitted that Information Officer by letter dated 19/09/2009 sent aforesaid information to the applicant-Lt.Col.(Retd.) Shrikant Yeshwant Kane. Subsequently revised letter dtd.03/11/2009 was sent to Lt.Col.(Retd.)Shrikant Yeshwant Kane. Alongwith aforesaid letter dated 21/12/2009, copies of letters dated 19/09/09 and 03/11/2009 were sent to applicant- Lt.Col. (Retd.) Shrikant Yeshwant Kane are enclosed.

5) Notice of this complaint was issued to the Opposite Party. Inspite service of notice the Opposite Party has not appeared before this Forum. Hence, ex-parte order was passed against the Opposite Party. Alongwith complaint, the Complainant has filed documents as per list of document which includes photo copy of application dated 06/08/09 made U/s.6(1) RTI Act, 2005 to the Opposite Party. Copy of letter dated 19/09/2009 received from the Opposite Party etc. On 01/04/2010 the Complainant has produced documents as per list of document which consist of bill dated 30/03/2010 given by Advocate Bhushan N. Mohata for consultation charges in respect of Writ Petition No.2771/2008 filed before bench of the Bombay High Court, Photo copy of railway tickets, etc.

6) Following points arises for our consideration and our findings thereon are as under –

SR.N O.	POINTS	FINDINGS
1.	Whether the Complainant has proved deficiency in service on the part of Opposite Party ?	Yes.
2.	Whether the Complainant is entitle to recover interest as prayed for ?	As per final order.

Reasons :-

Point No.1 :- Following facts are undisputed fact – that on 06/08/2009 the Complainant had made an application to the Opposite Party under the provision of section 6(1) of RTI Act, 2005. The Complainant has produced photo copy of the said application alongwith complaint. By the aforesaid application the Complainant had sought information from the Opposite Party regarding

number of lady candidates and their names who had applied for interview held by Maharashtra Public Service Commission for the post of Zilla Sainik Welfare Officer from June,1996 to June,1998 and inquired as to whether the Director General Resettlement from ministry of Defence or an Officer nominated by him, associated as a member in the selection board as required vide para 1(c) of Government of India, Ministry of Defence, Kendriya Sainik Board Letter No.1(1)/POL/ksb/a/1994 Dated 27/04/1994.

The Dy.Secretary –cum-Government Information Officer, Public Service Commission vide letter dated 19/09/2009 sent requisite information to the Complainant. The Complainant has produced photo copy of the said letter alongwith complaint. On 21/12/2009 Dy.Secretary-cum-Government Information Officer, Maharashtra Public Service Commission wrote letter to the President of this Forum and informed that Information Officer had furnished information to applicant-Lt.Col.(Retd.) Shrikant Yeshwant Kane vide letter dated 19/09/09 and subsequent letter dated 03/09/09. Copies of said letters are also annexed to the aforesaid letter address to the President of this Forum.

In the aforesaid letter the Dy.Secretary-cum-Government Appellate Authority has raised the contention that the Complainant- Lt.Col. (Retd.) Shrikant Yeshwant Kane has filed complaint before this Forum under Consumer Protection Act, 1986 on the ground that Government Information Officer did not supply requisite information and delay was caused in supplying information to the Complainant. It is contended that there is no relationship as a consumer and service provider between the Complainant and the Opposite Party. The Complainant has not paid any consideration for services to the Opposite Party and as such, the Complainant is not a 'Consumer' with ambit of Consumer Protection Act, 1986. It is further submitted that the complaint filed by the Complainant is false. The Opposite Party has already submitted requisite information to the Complainant and further Opposite Party is ready to give inspection of concerned files to the Complainant and therefore, complaint be dismissed with cost.

The Complainant has submitted that he is a Consumer as per Consumer Protection Act, 1986. In support of his contention he has relied upon the decision of National Consumer Dispute Redressal Commission, in Revision Petition No.1975/2005 in the matter of Dr.S.P.Thirumala Rao V/s. Municipal Commissioner, Mysore City Municipal Corporation. It appears from the contents of the above cited of judgement that in the said case Dr.S.P.Thirumala Rao has made two applications seeking necessary information under the rule 4(1) of Karnataka Right to Information Act, 2002. Under the said Act, Opposite Party was required to furnish information within 15 days. However, the said information was not furnished within stipulated time which according to the Complainant amounts to deficiency of service. District Consumer Forum had framed 4 point for consideration and the points were answered in favour of the Complainant. Distirct Forum directed Opposite Party

to pay damage of Rs.500/- and cost of Rs.100 to the Complainant. This order was challenged before State Commission of Karnataka and Karnataka State Commission has held that it is the case of deemed rejection against which, an appeal is provided under Clause II of Section 7 of Karnataka Right Information Act, 2002. It was observed that though the remedy provided u/s.3 of Consumer Protection Act is in addition to the remedy provided under other Acts and not in derogation of the provisions of any other law. Once the Complainant has availed the remedy against which appeal is provided, he cannot maintain a complaint under the Consumer Protection Act. Accordingly, Hon'ble State Commission of Karnataka State allowed the appeal and order of District Forum was set aside. Thereafter appeal was preferred against the said order of the Hon'ble State Commission of Karnataka State before National Consumer Dispute Redressal Commission, . Hon'ble National Commission has held that "Though, the said Act provides for penalties U/s.9 of the said Act on the competent authority, yet, the Act does not provide for any remedy to the consumers who have sought information under the said Act for deficiency of service in the nature of compensation or damages for not furnishing the information sought to which they are entitled to get under the said Act. Section 3 of the CPA provides additional remedy in addition to the remedies provided under other Acts and it is not in derogation of the provisions of any law for the time being force. The Consumer Fora has, therefore, jurisdiction to entertain the complaint in respect of deficiency of service in the given facts especially when information sought was not furnished. The competent authority was required to give information within 15 days of the application in terms of Section 5 of the said Act. However, the said information was not furnished. The Complainant had approached the District Forum claiming compensation/damages for deficiency of service. Even though, further remedy may be available to the applicant in case information is not supplied in terms of Section 5 of the Act within 15 days, yet, there is no bar to approach the District Forum for deficiency of service. The remedy under the said Act would take care of disciplinary action and penalty against the competent authority is not furnishing the information but no remedy is provided under the said Act to the applicant seeking information therein if information sought is not provided resulting in deficiency of service on that count. The applicant had paid a fee of Rs.10/- for seeking the said information. The case of the applicant would fall within the scope and ambit of Section 2(i)(o) of CP Act, which provides that service means service of any description which is made available to potential users, which include purveying of news or supplying of other information. The complainant had availed of the services under the said Act for consideration by paying fee and had sought information under the said Act, which was not supplied to him, which amounts to deficiency of service. The Complainant is, thus, a consumer vis-à-vis information sought on payment under the said Act."

In the instant case it appears that the applicant had affixed five rupees four Court Fee Stamp

i.e. total twenty rupees stamp to the application dated 06/08/2009 made to the Opposite Party for seeking necessary information. In view of afore-cited judgement of Hon'ble National Commission, the Complainant is 'consumer' within definition of Consumer Protection Act, 1986

The Complainant had made aforesaid application to the Opposite Party for seeking necessary information on 06/08/2009 U/s.6(1) RTI Act, 2005. Relevant Provisions of Section 7(1) of RTI Act are as under -

“Disposal of request

(1) Subject to the provision to sub-section (2) of Section 5 or the provision to sub-section (3) of Section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under Section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9.

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.

(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving -

(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fee, and the period intervening between the dispatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section.

(b) information concerning his or her right with respect to review the decision as to the amount of fee charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

(4) Where access to the record or a part thereof is required to be provided under this Act and the person to who access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance

to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed.....”

The Complainant has made an application to Opposite Party on 06/08/2009 and thereby requested to furnish certain information U/s.6(1) of the RTI Act, 2005

“Undisputedly in this case Opposite Party Dy.Secretary-cum-Government Appellate Authority of Maharashtra Public Service Commission by his letter dated 19/09/2009 for the first time gave reply to the Complainant. Under the aforesaid Section 7(1) which is reproduced above the information sought by the Complainant was required to be furnished within 30 days after receipt of the application U/s.6(1) by either providing information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in section 8 & 9. In the present case it is clearly seen that the information was sought by the Complainant on 06/08/2009 and the same was furnished by the Opposite Party on 19/09/09 for the first time and it was beyond the mandatory period of 30 days. Delay of 13 days has occurred in furnishing the information to the Complainant and that delay caused amounts to deficiency in service of Opposite Party. Further it is the contention of the Complainant that Opposite Party did not give the answers to his specific questions as clearly mentioned in the application. It is clearly seen from the letter dated 03/011/2009 on record addressed to the Complainant that Dy.Secretary of Government Appellate Authority of Maharashtra Public Service Commission has informed the Complainant that further information was furnished to the Complainant vide the said letter hence, it can be clearly concluded that firstly there was a delay of 13 days to furnish the information sought by the Complainant and the information furnished on 19/09/2009 was incomplete information.

In view of the above discussion we have no hesitation in holding Opposite Party guilty of deficiency in service. The Complainant has prayed for the reimbursement of expenses incurred by him for filing Writ Petition No.4099/2008 before the Hon’ble High Court of judicature of , Nagpur Bench Nagpur. The Complainant has not produced copy of the aforesaid Writ Petition and the order passed in the said Writ Petition. Absolutely there is nothing on record to support the contention of the Complainant that information sought by the Complainant from the Opposite Party had any concern with the said Writ Petition. On the contrary Opposite Party in their letter dated 21/12/2009 addressed to this Forum has stated that Writ Petition filed by the Complainant has no concern with the Opposite Party. For want of evidence we hold that the Complainant is not entitled to claim reimbursement of the expenses incurred by him for the Writ Petition filed before Hon’ble High Court of judicature of , Nagpur Bench Nagpur.

The Complainant has prayed for compensation of Rs.30,000/- towards mental agony. The complainant has claimed compensation for mental agony appears to be exorbitant. The Complainant has proved deficiency in service on the part of Opposite Party therefore, considering facts and circumstances of the case we think it just to direct Opposite Party to pay Rs.1,000/- as compensation and Rs.1,000/- as cost of this proceeding to the Complainant. Hence, we answer point no.2 accordingly.

For the reasons discussed above, the complaint is partly allowed & we pass following order

ORDER

- i. Complaint No.301/2009 is partly allowed.**
- ii. Opposite Party shall pay Rs.1,000/- (Rs.One Thousand Only) as a compensation and Rs.1,000/- (Rs.One Thousand Only) as cost of proceeding to the Complainant within 1 month from the date of receipt of copy of this order.**
- iii. In case of failure to comply with the order within above said stipulated period, the Opposite Party shall be liable to pay interest @ 9 % p.a. on aforesaid compensation amount of Rs.1,000/- till realization of entire amount to the Complainant.**
- iv. Certified copies of this order be furnished to the parties.**

(Smt.Jyoti S. Iyer)
Hon'ble Member

(Shri.S.B.Dhumal)
Hon'ble President

aj/sbd